

04-CV-249



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To Rules\_Comments@ao.uscourts.gov

cc

bcc

Subject comments period

I just found out about this request for comments. Unfortunately, the comments period ended yesterday. Please extend the comments period, so you can use my comment. I seek to highlight the issue that will occur with any business or organization that is knowingly conducting itself illegally, and what their document retention policy will become. Though I single out Microsoft as an example, any other company engaging in illegal business practices could do the same (i.e., Enron, Worldcom, etc.).

As an example, Microsoft has a curious e-mail document retention policy -- most emails are scrubbed from the system one month after they are received(\*), and has been doing so for one year. I'll admit to cynicism (though I prefer to call it realism), but I believe this to be the case so that any potentially incriminating correspondence is neatly removed from their easily-accessible systems. If email is archived on tape which is not considered "reasonably accessible", there's not much stopping them from creating a very short-term document retention policy, and putting everything else on tape, for the sake of emergency restoration. Naturally, tape can easily be burned or demagnetized, rendering it basically useless.

While the current US. DOJ administration may be lenient on a convicted illegal monopolist, future administrations may not share the same mindset. Raising the bar for evidence gathering may not be the appropriate for the restoration of a fair market in this instance. More of the same could happen at Wal-Mart with the alleged glass ceiling for its female employees and the resulting actual class action lawsuit. Raising the bar for evidence gathering is appropriate in neither case.

And as they say, those that cannot remember history are doomed to repeat it.

Thank you for your time,  
Mike Overbo

\* <http://www.pcworld.com/news/article/0,aid,116255,00.asp>  
much more reading on Microsoft's practice is available on the internet.  
Search google with the following text: microsoft "retention policy"